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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

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on _____

Signature_____

Typed or printed name _____

Application Number	Filed
10/605,172	09/12/2003

First Named Inventor

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Art Unit	Examiner
2622	Tuan H. Le

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
     Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number ___55130___.

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

/R. Brian Drozd/
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Signature

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Telephone number

7/29/2010
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

Attachment
Reasons for Requesting a Pre-Appeal Brief Request for Review

Applicant is requesting a pre-appeal review on the basis that the Office has failed to satisfy all elements required for a *prima facie* rejection of anticipation under 35 U.S.C. §102(e).

A. Final Office Action

The pending claims in the present application includes Claims 1-3, 5, 7-13, 15-24, 32-38, 40-42, 48-52 and 54-59, including independent Claims 1, 17, 32 and 48. Claims 26-31 and 43-47 have been withdrawn. Claims 1-3, 5, 7-13, 15-24, 32-38, 40-42, 48-52 and 54-59 stand rejected under 35 U.S.C. § 102(e) as being unpatentable over U. S. Patent Application Publication No. 2003/0076408 to Dutta ("Dutta").

B. Invention

As described in the Background of the present application, wireless communication devices, such as cellular telephones and the like are becoming feature rich devices. Many of the latest cellular telephone models can surf the Internet, transmit and receive data including emails, text messages and the like in addition to normal voice communications. One of the latest features to be associated with or incorporated into wireless communication devices, cellular telephones and the like are digital cameras. These cameras can be built into the communication device or may be a separate module that can be electrically coupled to the communication device. A camera equipped communication device that also has Internet and email capability can capture images and transmit such images via the Internet, email or via other media. Besides being a relative novelty, digital cameras or optical sensors associated with a communication device provide a way to communicate with the communication device or cell phone optically in addition to wired and wireless means, such as infrared (IR) and radio frequency (RF). IR and RF communication, such as Bluetooth, Wireless Fidelity (WiFi) and the like, however, each require an active transmitting device that is operated in real-time and requires that the communication device be within range. Additionally, the interoperability between the camera, the device's processor and the IR and RF systems has not been developed in order to provide a convenient and effective user experience.

The present invention addresses the above problems. The present invention is directed to

a communications device equipped with an optical sensor, such as a cell phone having an integrated camera. The communications device allows a user to take an image of data, such as an email address, phone number, a bar code, access information to a web site, a sequence of commands, information associated with a product or service and the like. The data is then identified by the communications device as a specific class of data (e.g., an email address, sequence of commands, etc.) and based on the identification of the class of data an associated function is automatically performed by the communications device. Examples of the predetermined associated functions that may be performed by the communication device in response to identifying or selecting the class of data includes: ordering a product or service; decoding data from one or more images to reprogram the communication device; downloading communication device setup parameters; storing one or more phone numbers; establishing a call or other communications; storing information associated with a web site or email address; accessing a web site; sending an email message and similar operations.

In accordance with the above-described embodiments, independent Claims 1, 17, 32, and 48 recite devices, methods and a computer-readable storage medium to "capture an image, the image comprising a class of data embedded in the image, the class of data having an associated predetermined function and comprising at least one of characters and numbers," "*identify* the class of data in the image from a plurality of possible classes of data, and "*automatically* perform the associated predetermined function in response to the class of data being identified."

C. **Prior Art**

The Dutta patent is directed to a method for "scanning an image and/or taking a picture under low light conditions." See Dutta at paragraph [0002]. Dutta provides for reconstruction of an image to remove distortions in the image caused by motion of a handheld device and/or the low lighting conditions, as discussed in Dutta's Summary of the Invention section. This concept is illustrated in Figures 4 and 6 of Dutta.

Further, as discussed in paragraph [0023], Dutta discloses that data from an image can be converted to text using optical character recognition and that a user can then store the converted text/characters into a database for later use.

D. Legal Precedent

The basic requirement of a *prima facie* case of anticipation under 35 U.S.C. §102(e) is that each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *See* MPEP §2131.

E. Application of Legal Precedent to Final Rejections

1. 35 U.S.C. §102(e)

In rejecting the independent claims of the present application, paragraphs [0021] and [0023] and Figure 3 of Dutta were cited. Paragraphs [0021] and [0023] of Dutta recite (emphasis added):

> "[0021] The processing engine 304 coordinates the actions of the micro camera module 204, access to the memory 306, and processes the images obtained in accordance with measurements taken by the motion sensors 314X, 314Y, 314Z for ultimate display by the display (which may be integral to the handheld device or remote therefrom), for storage in a local or remote database, or for transmittal elsewhere, all of which are discussed in more detail below. A suitable processing engine would include some kind of central processing unit capable of processing data and software programs.
>
> ...
>
> [0023] The reconstructed image is then displayed on the display of the handheld device, transmitted to a separate display connected to the handheld device (either through a local wire connection to a local display or through a connection through a network or through the internet to a remote display), or transmitted wirelessly to a local or remote display device or storage medium. *Alternatively, or in addition, the reconstructed image may be stored locally or remotely as an image or converted from an image into text, etc., by an optical character recognition (OCR) program. The text may then be added to an appropriate local or remote database, such as a list of telephone numbers, internet addresses (URLs), e-mail addresses, names, etc., which can **later** be accessed by the handheld device or another device to initiate a telephone call, browse the Internet, send an e-mail message, etc."* (Emphasis provided).

Accordingly, Dutta discloses that the reconstructed image may be converted into text, which then may be added to a database, such as a list of telephone numbers, URLs, email addresses, names, etc. Dutta does not disclose "a processor configured to identify the class of data in the image

from a plurality of possible classes of data and automatically perform the associated predetermined function in response to the class of data being identified," as recited in the independent claims of the present application. In this regard, Dutta does not disclose a processor configured for *identifying the class of data* of the extracted text nor does Dutta disclose *automatically* performing a predetermined function *in response to* such identification. In fact, Applicant can find no discussion in Dutta of any "automatically" performed function related to the text conversion process. The functions of Dutta are manually initiated by the user and certainly not automatically performed by the device "in response to identifying the class of data." This is especially evident given that Dutta states that the converted "text . . . can <u>later</u> be accessed by the handheld device" in performing a function." By stating that the text can "later" be accessed implies that a user accesses the text using the device to perform a function – not *automatically* performing a function in response to identifying the class of data.

Additionally, Figure 3 of Dutta was cited in rejecting Claim 1. Figure 3 merely illustrates a processing device that outputs an "image to display." There is no disclosure in Figure 3 or the related discussion in Dutta of "a processor configured to identify the class of data in the image from a plurality of possible classes of data and automatically perform the associated predetermined function in response to the class of data being identified." It is noted that Figure 5 of Dutta was previously cited against Claim 1. Yet, Figure 5 of Dutta merely illustrates a general optical character recognition (OCR) of text in an image. Still there is no disclosure in any portion of Dutta of "a processor configured to *identify the class of data* in the image from a plurality of possible classes of data and *automatically perform the associated predetermined function in response to the class of data being identified.*" The processor of Dutta merely performs routine functions and does not actually identify what class of data the text belongs to, much less identify the text and automatically perform a function associated with that identified class.

For at least the reasons discussed above, it is submitted that the invention as recited in independent Claims 1, 17, 32 and 48, and the claims depending therefrom, are patentably distinguishable over Dutta and that the Office's burden of establishing a *prima facie* case of anticipation has not been met. Applicant therefore submits that the rejection under 35 U.S.C.

§102 of independent Claims 1-3, 5, 7-13, 15-24, 32-38, 40-42, 48-52 and 54-59, as well as the claims dependent therefrom, is improper and should be reversed.